

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Cause No. 1:08-cr-0132-SEB-TAB
)
MICHAEL BARATTA,) - 01
)
Defendant.)

REPORT AND RECOMMENDATION

On May 27, 2021 and February 2, 2022, the Court held hearings on the Petition for Warrant or Summons for Offender Under Supervision filed on May 14, 2020. Defendant Baratta appeared in person with his appointed counsel Dominic Martin. The government appeared by Kristina Korobov and Adam Eakman, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Ryan Sharp.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Baratta of his rights and provided him with a copy of the petition. Defendant Baratta orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Baratta admitted violation numbers 1, 2, and 3. [Docket No. 1390.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“You shall not commit another federal, state or local crime.”</p> <p>On April 25, 2021, at 9:57 p.m., Mr. Baratta's case manager at the Volunteers of America (VOA) was reviewing video footage of the dorm floor. Mr. Baratta was observed on his bunk watching videos on what appeared to be a smart phone. The U.S. Probation Office was contacted, and this officer met with Mr. Baratta the following day. He denied having a smart phone. When confronted about the video footage of him watching videos on a device, he admitted to having a media player in his locker at the VOA and was using it to watch movies and view photos. This officer asked if there was any pornography on the device. He became visibly nervous and admitted there was "underage stuff" on the device, but denied it was pornography. He was informed that the device would be confiscated and told this officer where to find the device in his locker at the VOA.</p>
2	<p>On April 27, 2021, this probation officer provided the device to agents from the Department of Homeland Security for review. The agents advised the device contained many photos of underage females in various stages undress, and there were several photos that would fit child pornography. They provided one example where a prepubescent minor female appeared in see-through underwear where the child's genitalia was the focal point of the image. This triggered a new criminal investigation and further analysis of the device is forthcoming.</p> <p>“The defendant shall not possess any pornography, erotica or nude images. Any such material found in the defendant's possession shall be considered contraband and may be confiscated by the probation officer.”</p> <p>On April 25, 2021, Mr. Baratta possessed pornography as detailed in the above-mentioned allegation.</p>
3	<p>“You shall reside in a residential reentry center for a term of up to 180 days. You shall abide by the rules and regulations of the facility.”</p> <p>On April 25, 2021, while residing at the Volunteers of America, Mr. Baratta failed to abide by the rules and regulations of the facility by viewing and possessing a device containing child pornography.</p>

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is I.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 4 to 10 months' imprisonment.

5. The parties jointly recommended a sentence above of the guideline range of thirty-six (36) months with lifetime supervision to follow. This recommendation is in lieu of new federal charges being filed against Defendant Baratta. Defendant requested placement at FCI Elkton.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of thirty-six (36) months with lifetime supervision to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

1. You shall report to the probation office in the judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. Justification: This condition is an administrative requirement of supervision.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer. Justification: This condition is an administrative requirement of supervision.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.

4. You shall not knowingly leave the judicial district without the permission of the court or probation officer. Justification: This condition is an administrative requirement of supervision.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege. Justification: This condition is an administrative requirement of supervision.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact. Justification: This condition is aimed at reducing the risk of recidivism and for protection of the community.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon. Justification: This condition will assist the probation in monitoring the offender for protection of the community and is a requirement pursuant to federal law.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer. Justification: This condition is an administrative requirement of supervision.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment. Justification: This condition will ensure the offender maintains gainful employment and aid in reducing recidivism.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court. Justification: This condition is aimed at reducing recidivism and to monitor the offender for protection of the community.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement. Justification: This condition is aimed at reducing recidivism and for protection of the community.

13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision. Justification: This condition is aimed at reducing the risk of recidivism and for protection of the community.
14. You shall pay the costs associated with the following imposed conditions of supervised release, to the extent you are financially able to pay for substance abuse treatment and substance abuse testing. The probation officer shall determine your ability to pay and any schedule of payment. Justification: This condition will make the offender invest in their sobriety and rehabilitation.
15. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will aid in addressing the offenders history of substance abuse.
16. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage. Justification: This condition will aid in addressing the offender's history of substance abuse.
17. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods. Justification: This condition will assist in ensuring the offender is compliant with a drug-free lifestyle.
18. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption. Justification: This condition will aid in ensuring compliance with a drug-free lifestyle and the offenders rehabilitation.
19. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.

20. You shall not have unsupervised meetings, activities, or visits, or intentional communications with any minor unless they have been disclosed to the probation officer and approved by the court. You shall not have supervised meetings, activities, visits, or intentional communications with any minor unless they have been approved by the probation officer. Before you may request approval for such meetings, activities, visits, or intentional communications (unsupervised or supervised), you must notify the person(s) having custody of any such minor(s) about the conviction in this case and the fact that you are under supervision. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
21. You shall not participate in unsupervised meetings, intentional communications, activities, or visits with persons you know to be a registered sex offender or to have been convicted of a felony sex offense involving an adult or minor, including any child pornography offense, except as disclosed to the probation officer and approved by the court. This condition is not intended to prevent you from participating in treatment programs or religious services with felons in such programs/services so long as the activity has been disclosed as described above. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
22. You shall not enter or remain at a place for the primary purpose of observing or contacting children under the age of 18. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
23. You shall not possess any child pornography or visual depictions of child erotica or nude minors. Any such material found in your possession shall be considered contraband and will be confiscated by the probation officer. Justification: This condition is to assist the probation officer in monitoring the offender and protecting the community. The offender is a convicted sexual offender.
24. You shall participate in a program of treatment for sexual disorders, including periodic polygraph examinations, as directed by the probation officer. The treatment provider should determine the type and timing of such polygraph examinations. The court authorizes the release of the presentence report and available psychological evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will aid in addressing the offenders history of sexual addiction and sexual attraction to minors. It will also hold the offender accountable while being supervised in the community.
25. You shall consent, at the direction of the probation officer, to having installed on your computer(s), telephone(s), electronic devices, and any hardware or software, systems to monitor your use of these items. Monitoring will occur on a random and/or regular basis. You will warn other occupants or users of the existence of the monitoring hardware or software. To promote the effectiveness of this monitoring, you shall disclose in advance

all cellular phones, electronic devices, computers, and any hardware or software to the probation officer and may not access or use any undisclosed equipment. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.

Defendant reviewed the above noted conditions with his attorney.

Defendant Baratta is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation. The Magistrate Judge will make a recommendation of placement at FCI Elkton.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: 2/3/2022



Mario Garcia
United States Magistrate Judge
Southern District of Indiana

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